No. 153

In the Supreme Court of the United States

OCTOBER TERM, 1954

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

DREXEL & COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

SIMON E. SOBELOFF,
Solicitor General,
Department of Justice,
Washington 25, D. C.

WILLIAM H. TIMBERS,
General Counsel,
MYRON S. ISAACS,
Associate General Counsel,
Securities and Exchange Commission,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 153

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

v.

DREXEL & COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

This memorandum is limited to the point argued at pages 8–12 of the brief in opposition where the respondent seeks to distinguish four cases pending when the petition was filed. The major basis for distinction alleged as to three of those cases is the claim that "the parent company itself was in each case reorganized or dissolved in the proceedings," and that "the estate and assets of the parent company were in each case before

317187—54

the Commission and were dealt with by the plan which the Commission approved as fair." (Br. in Opp., p. 11.) The respondent claims that in each of these four reorganizations the Commission "clearly has complete jurisdiction over all fees there claimed." (Br. in Opp., p. 9.)

It is submitted that not only does the Commission indeed have jurisdiction over the fees claimed in these proceedings, but also that there is no essential distinction between them and the instant case. The important common element is that the reorganization of the subsidiaries was essential to achieve compliance by the parent with the Holding Company Act. The mere fact that the parent may have applied to the Commission under Section 11 (which Bond and Share also did, incidentally, in the present case—see Petition p. 3) rather than under Sections 9, 10, and 12, makes no difference in the power of the Commission to disapprove fees.

In the Standard Power & Light Corporation case (Br. in Opp., p. 9), fee claims were asserted against Standard Power & Light Corporation and against Standard Gas and Electric Company not only with respect to proceedings in which the companies themselves were being directly reorganized, but also in proceedings for the reorganization of subsidiary companies in which Standard Power & Light Corporation and Standard Gas and Electric Company were involved only in the same sense that Bond and Share was

involved in the Electric reorganization. For example, the claim of Guggenheimer & Untermyer, in the amount of $3,500,000, includes claims for services in the reorganizations of Northern States Power Company[1] and of Pittsburgh Railways Company,[2] and in connection with the consolidation, recapitalization, and sale of the gas properties of Philadelphia Company.[3] All of these proceedings contributed to the ultimate reorganization of the parent companies, but that is precisely the situation involved in the instant case. In *In re Standard Gas and Electric Company* (D. Del., August 30, 1954), the court declined to pass upon the contention of Guggenheimer & Untermyer that the court had plenary jurisdiction to pass upon their claim for fees, and that the Commission was without jurisdiction, stating:

> Moreover, there is pending before the Supreme Court the important statutory issues as to the source of jurisdictional right in connection with fees and allow-

---

[1] See *Northern States Power Company*, 27 S. E. C. 321 (1947), 27 S. E. C. 547 (1948); Guggenheimer & Untermyer Fee Application, Commission File Nos. 54-172, et al., pp. 56-72.

[2] See *Elmer E. Bauer, Trustee of Pittsburgh Railways Company, Debtor*, Holding Company Act Release No. 9759 (1950); Guggenheimer & Untermyer Fee Application, Commission File Nos. 54-172 et al., pp. 132-143.

[3] See *Philadelphia Company*, Holding Company Act Release No. 8326 (1948); Guggenheimer & Untermyer Fee Application, Commission File Nos. 54-172 et al., pp. 144-150.

ances under the Public Utility Holding Company Act of 1935. [Citing the instant case.]

In *Northern New England Company* (Commission File No. 59–15), plans were filed in the same proceedings both by Northern New England Company (the top company) for its liquidation, and by New England Public Service Company (the direct subsidiary of Northern New England Company) for its liquidation. Fee claims against Northern New England were based in part upon services rendered in the reorganization of the subsidiary. Some of the claims for fees and expenses pending at the time the petition was filed have been disposed of by order of the Commission,[4] and it now appears that the one remaining claim for services to the top company in the reorganization of its direct subsidiary may likewise be settled in the near future.

Pennsylvania Gas & Electric Corporation (Commission Files Nos. 54–177 and 54–165) involved a series of plans, some of them providing directly for the reorganization of the top company, and others providing for subsidiary company reorganizations.[5] Here, too, some of the

---

[4] *Northern New England Company*, Holding Company Act Release No. 12605 (July 29, 1954).

[5] See *Pennsylvania Gas & Electric Corporation*, Holding Company Act Releases Nos. 8025 (March 9, 1948), 8490 (September 3, 1948), 9574 (December 22, 1949), 11298 (June 5, 1952), and 11600 (December 15, 1952).

claims for fees and expenses have been settled and approved by the Commission since the filing of the petition.[5] Hearings are to be held upon the claim of representatives of Class A stockholders of the top corporation for approximately $150,000 for services rendered, which related in part to its own reorganization and in part to the reorganizations of subsidiary companies.

The application of United Corporation for reimbursement of expenses incurred in the reorganization of its subsidiary, *Columbia Gas & Electric Corporation* (File No. 54–117), is still pending. The question whether the Commission also will be required to pass upon the amount of the fees and expenses properly payable by United Corporation itself, if reimbursement is denied, is essentially the question here involved.

The basic element in all of these cases, including the Electric reorganization, is the fact that the reorganization of the subsidiary company is part and parcel of the parent's reorganization in order to effect system compliance with Section 11 (b) of the Act. The Electric plan proceeding was one of the many facets of the reorganization of Bond and Share and its holding company system. The fact that Bond and Share ultimately filed a separate application considered jointly with the plan filed by Electric, rather than joining in the

---

[5] *Pennsylvania Gas & Electric Corporation*, Holding Company Act Release No. 12628 (August 19, 1954).

filing of the plan itself, does not distinguish the cases referred to by the respondent, primarily because the difference is immaterial, but also because the same situation is involved to some extent in those cases.

There should be no confusion arising from the assertion that "the estate and assets of the parent company were in each case before the Commission." This does not mean that there was in those cases a receivership or trusteeship, but only that the proposed steps by the parent were specifically subject to the approval of the Commission. In the same sense the estate and assets of Bond and Share were before the Commission in the present case because of its applications under Sections 9, 10, and 12 of the Public Utility Holding Company Act of 1935. (See Petition, pp. 3–4, 10–11.)

We submit, therefore, that the distinctions drawn in the Brief in Opposition are without real significance, either substantively or procedurally.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

WILLIAM H. TIMBERS,
General Counsel,
MYRON S. ISAACS,
Associate General Counsel,
Securities and Exchange Commission.

OCTOBER 1954.

U. S. GOVERNMENT PRINTING OFFICE : 1954